

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Jonathan THIERMAN,	:	
Plaintiff,	:	
	:	
v.	:	Civ. No. 3:94cv1422(PCD)
	:	
LEVY, PHILLIPS & KONIGSBERG,	:	
Defendant.	:	

RULING ON PLAINTIFF’S MOTION FOR RECONSIDERATION

Plaintiff moves for reconsideration. (Dkt. No. 16.) He argues that this court has subject matter jurisdiction over his claim and should therefore allow him to proceed. The motion is granted. However, the disposition of the prior underlying ruling, that there is no subject matter jurisdiction over his suit, remains unchanged and his case remains closed. This Ruling also disposes of the other pending motions before this court. (Dkt. Nos. 17-1, 17-2, 18.)

I. BACKGROUND

A. Factual Background

Plaintiff’s father, a citizen of Georgia, was a class member in a large asbestos class action lawsuit in the early 1990s brought on behalf of World War II workers in the Brooklyn Naval Shipyard, where Plaintiff’s father has been an inspector. Defendant, a New York law firm representing the father and the father’s wife, received \$31,000 to be distributed, in addition to other monies. By the time the money was to be distributed, the father was dead. It appears that the proceeds have been fully distributed to the father’s wife. Plaintiff, a Connecticut citizen, has brought numerous suits and made vigorous legal efforts to the effect that he and his sons were improperly denied this money. Nonetheless,

plaintiff has repeatedly been referred to the Georgia probate courts. This suit, now closed, sought an order from this court that Defendant distribute the \$31,000 to him.

B. Procedural History

Plaintiff's original motion was denied on September 22, 1994 and his case was dismissed. He has previously moved to reopen his case and for reconsideration four times. Though each request was considered, the underlying ruling remained unchanged. Although the present motion is labeled as a Motion to Reopen with Full Recognition of Jurisdiction by This Court, it is construed as for reconsideration. This is the fifth such motion for reconsideration.

II. MOTION FOR RECONSIDERATION

Plaintiff asserts that his father's intent was that all settlement monies distributed to him before his death would eventually go through his estate and hence to his surviving spouse. In contrast, he asserts that his father's intent was that all settlement monies distributed on behalf of the father after his death would be considered wrongful death proceeds and, through a power of appointment, were to come to Plaintiff, his son. Plaintiff therefore argues that these wrongful death proceeds should flow not through the probate courts but through the court that handled the wrongful death action, a federal court. Plaintiff was heard by the district judge in the Eastern District of New York, who handled the asbestos class action, on June 10, 1994. The judge found no jurisdiction, instead referring Plaintiff to the Georgia probate courts.

Plaintiff asserts various misdeeds and machinations by Defendant to deny him his just share of the settlement proceeds. Despite these assertions, this is not a tort action.

Rather, Plaintiff seeks an order of this court that Defendant distribute the \$31,000 to him. The question then is whether after the father's death, Defendant properly distributed the settlement funds to the father's wife instead of to Plaintiff, Plaintiff's brother, and to Plaintiff's sons in trust.

Plaintiff's allegation that the funds were not distributed in accordance with the provisions of the settlement agreement nor his asserted role as "administrator of the federal wrongful death estate," is a matter for the court that administered the settlement agreement. The extent to which the settlement monies were considered wrongful death proceeds so as to be subject to Georgia's wrongful death statutes, is also a matter for the court that administered the settlement agreement. That court has already denied him relief. Whether this was proper or not, a matter already decided by this court, is for the Second Circuit to decide, not this court.¹

Plaintiff's assertion that the proceeds were not distributed in accordance with his father's will is a matter for a probate court with jurisdiction. Plaintiff's assertion that the father's will is invalid or does not reflect his father's intent as to the distribution of assets after his death is also a matter for a probate court with jurisdiction. Plaintiff does not dispute that Georgia is the correct probate venue. He even asserts that Georgia law should govern this case. A Georgia probate court has already denied him relief. The propriety of that ruling is for the Georgia appellate courts with jurisdiction, not this court.

¹ The Second Circuit subsequently upheld the New York federal district court. Thierman v. Thierman, 2000 WL 426205 (2d Cir. April 14, 2000) (unpublished). In doing so, it noted that "federal law can provide no remedy for [Plaintiff's] alleged wrongs." Id. at *1.

Plaintiff has fought this battle in federal courts in New York and the probate courts in Georgia. The present case amounts to an attempted end-run around these courts and to relitigate their decisions. This ruling does not address whether or not Plaintiff is due the \$31,000. Rather, it is here held that this court is not the proper forum to decide the question Plaintiff presents.

III. MOTIONS FOR EXPEDITED TREATMENT

Plaintiff files a Motion to Reopen for Expedited Treatment - Simplification of Issues Possibly Qualifying Case for Summary Judgment and Request for Recognition of Applicable Georgia Legal Authority Recent U.S. Supreme Court Decisions Recognizing State Jurisdiction over Certain Claims. (Dkt. No. 17.) The motion is denied as moot since only a few days later Plaintiff filed a “corrected version replacing previous version.” The subsequent motion for expedited treatment, (Dkt. No. 18), is denied as moot in light of the issuance of the Ruling above.

IV. CONCLUSION

Plaintiff’s motion for reconsideration, (Dkt. No. 16), is **granted**. However, the disposition of the prior underlying ruling, (Dkt. No. 5, Endorsement), remains unchanged.

Plaintiff’s motions for expedited treatment and other considerations, (Dkt. Nos. 17-1, 17-2, 18), are **denied as moot**.

SO ORDERED.

Dated at New Haven, Connecticut, April __, 2001.

Peter C. Dorsey
Senior United States District Judge